

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6715

BILL NUMBER: HB 1225

NOTE PREPARED: Jan 9, 2008

BILL AMENDED:

SUBJECT: Illegal Alien Matters.

FIRST AUTHOR: Rep. Koch

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☒ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill prohibits a state agency or political subdivision from providing federal, state, or local public benefits to a person who is not a: (1) United States citizen; or (2) qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States. It requires a state agency or a political subdivision to verify the lawful presence in the United States of each individual who: (1) is at least 18 years of age; and (2) applies for federal, state, or local public benefits administered by the agency or political subdivision. The bill provides that: (1) a state agency or political subdivision may provide variations of the verification of lawful presence requirements; and (2) a person who makes a false, fictitious, or fraudulent statement of representation in an affidavit verifying lawful presence commits a Class D felony.

This bill also prohibits a person to knowingly employ an unauthorized alien. It requires the Attorney General to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the appropriate prosecuting attorney; and (4) maintain certain records of violation orders. The bill requires prosecuting attorneys to file actions against employers for knowingly employing unauthorized aliens after December 31, 2008.

This bill requires a court to: (1) hold a hearing and make a determination of the action on an expedited basis; (2) if a person knowingly employs an unauthorized alien, order the employer to terminate the employment of unauthorized aliens, order the employer to file a signed affidavit, and place the employer on probation for three years; (3) order agencies to suspend all licenses held by the employer for the operation of the business location if the employer fails to file a sworn affidavit; (4) for a second violation during the probationary period, order agencies to revoke all licenses held by the employer for the operation of the business location; and (5) send copies of orders to the Attorney General. It also provides that a court may: (1) suspend an employer's licenses if an employer knowingly employs an unauthorized alien; and (2) consider only the

federal government's verification or status information in determining whether an individual is an unauthorized alien. The bill establishes: (1) a rebuttable presumption that an employer did not knowingly employ an unauthorized alien if the employer verified the employment authorization of an individual through the federal pilot program; and (2) an affirmative defense if the employer complied in good faith with the federal employment verification requirements. This bill also makes it a Class C misdemeanor to knowingly file a false or frivolous allegation with the Attorney General.

This bill makes it a: (1) Class A misdemeanor to transport or move (and a Class D felony for a subsequent offense); and (2) Class A misdemeanor to conceal, harbor, or shelter from detection (and a Class D felony for a subsequent offense); an alien knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law.

The bill also prohibits a political subdivision from: (1) enacting an ordinance, resolution, rule, or policy that prohibits or limits another political subdivision or governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual; and (2) providing certain assistance to a person who is not lawfully present in the United States. It requires the Budget Agency to withhold allotments of state and federal funds for highways, roads, and streets of political subdivisions in violation of these prohibitions.

The bill requires a sheriff to make a reasonable effort to determine the citizenship or immigration status of certain persons. It prohibits a state financial institution from providing financial services to an individual who is present in the United States but not lawfully present in the United States.

This bill makes it a Class D infraction for a nonprofit corporation to provide assistance to an individual who is not lawfully in the United States. It provides that a nonprofit corporation that has a judgment loses the corporation's exemption status under income, sales, and property taxes for one year.

This bill requires the Superintendent of the State Police Department to: (1) negotiate terms of a memorandum of understanding concerning a pilot project for the enforcement of federal immigration and customs laws; (2) designate appropriate local law enforcement officers to be trained under the memorandum of understanding; and (3) file a report on the progress of entering into the memorandum of understanding.

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Withholding of Funds for Road Maintenance:* The State Budget Agency is required to withhold funding from local political subdivisions that violate the provisions of the legislation. This can decrease state expenditures paid to political subdivisions for road maintenance to the extent that they violate this provision.

Indiana Department of Financial Institutions: The legislation also contains provisions that would prohibit state financial institutions from providing financial services to individuals that are not legally present in the United States. This may increase the workload of the Indiana Department of Financial Institutions, the governing body of financial institutions in the state, to ensure that financial services are not provided to unlawfully present aliens. Actual methods of auditing financial institutions to ensure these benefits are not administered are unknown and depend on administrative decisions.

Indiana State Police: The bill requires the Superintendent to negotiate the terms of a memorandum of understanding between the state and the U.S. Department of Justice (DOJ) or the U.S. Department of

Homeland Security (DHS) concerning a pilot project designed for the enforcement of federal immigration and customs laws in the state. This will increase the workload of the Superintendent to negotiate the terms of this memorandum. The time necessary to complete this negotiation with either DHS or DOJ is unknown.

The Superintendent is required to designate law enforcement officers for training under the negotiated memorandum. Law enforcement personnel that are designated for training will be able to enforce the federal immigration and customs laws while acting within the scope of their law enforcement duties and will not require an additional division of law enforcement or new law enforcement personnel. ISP is required to apply for federal funding to finance the costs associated with training law enforcement personnel of the memorandum's requirements. If federal funding is not secured, state expenditures may increase if training is still provided to law enforcement personnel at the discretion of ISP and state decision makers.

The Indiana State Police reverted \$185,000 to the General Fund in FY 2007.

Public Benefits: SAVE Program Requirement: This bill requires state agencies or political subdivisions to utilize the SAVE program to verify if individuals applying for federal, state, and local public assistance are legally present in the United States. Verification with the SAVE program is only required if the individual applying for public benefits signs an affidavit alleging they are a lawfully present alien. This bill may increase expenditures for state agencies or political subdivisions to the extent that the SAVE program was not utilized before when administering public benefits.

Impact on Public Assistance: This legislation will impact state and local expenditures on public assistance only to the extent that state and local benefits are currently provided to illegal aliens. Federal benefits are defined under the bill as: (a) any grant, contract, loan, professional license, or commercial license appropriated funds of the United States, (b) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by appropriated funds of the United States.

Currently, illegal aliens are not banned from receiving care and services necessary for the treatment of an emergency medical condition; short-term, noncash, in-kind emergency disaster relief; public health assistance for immunizations; and other services designated in federal law. Additionally, federal law specifies that illegal aliens are not eligible for any state or local public benefit programs that receive federal funding in full or in part.

As of 2005 there were an estimated 55,000 to 85,000 unauthorized aliens in Indiana and an estimated 128,000 authorized immigrants that were admitted to the U.S. during FY 2006 that claimed Indiana as their state of destination. There have been an additional 55,000 immigrants in the state of Indiana that have been legalized between the years 1997 to 2006.

Submission of Written Reports: Agencies and political subdivisions are also required to report any errors or delays with the SAVE program to both the U.S. Department of Homeland Security and the Indiana Secretary of State.

(III) Employment of Unauthorized Aliens: Under the legislation, a person is banned from knowingly employing an unauthorized alien. If a complaint is filed with the Attorney General that an employer knowingly employed an unauthorized alien, it is the responsibility of the Attorney General to investigate the complaint. The Attorney General is required to verify the work authorization of any alleged unauthorized

aliens with use of the E-Verify employment verification pilot program. If an employer has employed an unauthorized alien, the Attorney General is required to notify the U.S. Immigration and Customs Enforcement, local law enforcement agencies, and the prosecuting attorney in the county in which the unauthorized alien was employed.

If an employer is found to have violated the provisions in this legislation, they will be placed on a three-year probation during which they must file a quarterly report with the Attorney General for each new individual the employer hires at the place of business where the violation took place. The Attorney General is also required to (1) maintain copies of any business license revocation or suspension orders from violations of the provisions in this legislation, (2) establish and maintain a database of the names and addresses of the employers that have a violation under the provisions of this bill, and (3) make orders available on the Attorney General's website. These requirements will increase the workload of the Office of the Attorney General. The increase in workload will require additional resources which will increase state expenditures by an estimated cost in the first year of implementation by \$265,000 to \$465,000, based on the PEW Hispanic Center's estimate of between 55,000 and 85,000 unauthorized aliens in Indiana, or about 0.5% to 0.75% of the nation's estimated 11.5 million unauthorized aliens.

Regarding the E-Verify Program, the program is currently free for use provided an account is registered online and the responsibilities outlined in the user agreement are accepted.

The funds and resources required for the provisions of the legislation that increase the workload of respective state agencies could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations.

Penalty Provisions: Under the bill, a person who makes a false, fictitious, or fraudulent statement of representation in an affidavit executed to verify their legal presence in order to receive public benefits commits a Class D felony. A Class D felony is punishable by a prison term ranging from 6 months to 3 years in jail or a reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for Class D felony offenders is approximately ten months.

Background Information: Indiana Code currently specifies that illegal immigrants are not eligible for Temporary Assistance for Needy Families (TANF), Medicaid, and Unemployment Insurance. This bill would cover any remaining state and local benefits that do not receive any federal funding. The bill could potentially reduce the number of persons in the state who are eligible for state or local benefits. This could result in a reduction in state expenditures or allow the state to redirect the funds to other persons needing services within a program for which services were not provided under the bill. Actual savings for the state would depend on the number of persons no longer eligible for services and the type and cost of services that they would otherwise receive. [Note: Some of these programs may be reimbursable by the federal government. Should the state not reallocate the funds to other persons within a program for services, the state could potentially reduce its overall federal funding.]

Currently, the Division of Family Resources (DFR) requires a declaration of citizenship/immigration status during the application process for public benefits. Any inability or unwillingness to complete the application results in the individual being considered an undocumented immigrant for public benefits. DFR does not report these individuals to U.S. Citizenship and Immigration Services (USCIS) unless USCIS has established that the immigrant is unlawfully in the United States. SAVE verification is currently used by DFR, but is not required in the benefit application process. Refusal to sign the declaration of lawful presence will result in ineligibility for public benefits.

Fees are charged to entities that request verification with the SAVE program. A minimum monthly service fee of \$25 is automatically billed to user agencies whose request volume does not equal or exceed \$25 that month. This amount will equal a minimum expense of \$300 a year for SAVE verification for each user agency.

Explanation of State Revenues: *Temporary Loss of Tax-Exempt Status for Eligible Entities:* This bill temporarily removes the tax-exempt status of all tax-exempt entities that violate the provisions of this bill for one year. These taxes include property tax, sales tax, and adjusted gross income tax paid by tax-exempt nonprofit entities. This provision can increase state revenue to the extent that tax-exempt corporations provide aid to unlawfully present aliens, which is indeterminable. The legislation also provides that when a corporation provides assistance to an unlawfully present alien, they commit a Class D infraction.

Federal Revenue for ISP Training Costs: State revenue will increase if federal funding is received for training law enforcement personnel. The amount the state receives is dependent on how much is requested in the proposal and how much funding the state is awarded.

Penalty Provision: Court Fee Revenue: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. If additional criminal cases are filed as a result of this legislation, revenue to the state General Fund will increase. If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund.

In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case. The maximum civil judgment for a Class D Infraction is \$25. Any increase in revenue from this provision is likely to be small.

If additional criminal court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. Individuals that transport, move, conceal, harbor, or shield from detection an illegal alien with a prior, unrelated conviction commits a Class D felony. The maximum fine for a Class D felony is \$10,000. The maximum fine for a Class C misdemeanor is \$500. Criminal fines are deposited in the Common School Fund.

Explanation of Local Expenditures: This bill will increase the caseload of courts with civil jurisdiction to the extent that tax-exempt corporations violate the provisions of this bill and redress is sought against them in civil court. Actual increases in court caseload are indeterminable, but likely to be small.

This bill will increase the expenditures of local governments and local government agencies that would be required to utilize the SAVE program to verify legal presence of benefit applicants that identify as legal nonresidents. Local expenditures will increase to the extent that the SAVE program was not utilized before to verify legal resident status. The ability of local political subdivisions to utilize the SAVE program as well as the funding status of each political subdivision that provides public benefits is indeterminable. Local political subdivisions will also be required to create reports detailing their adherence to the provisions of the legislation. This can impact the workload and resources of local agencies.

If a prosecuting attorney receives notification from the Attorney General of an employed unauthorized alien, the prosecuting attorney is required to file an action against the employer. Additionally, when the court orders a business license revocation, courts are required to send copies of these orders to the Attorney General. These provisions will increase the workload of prosecuting attorneys as well as local courts.

This legislation requires county sheriffs to make a reasonable effort to determine or verify the citizenship status and lawful presence of a person that is charged with a felony or with operating a vehicle while intoxicated and is confined in a county jail. If the sheriff is unable to perform this task, the sheriff is required to notify the U.S. Department of Homeland Security of this occurrence. This will increase the workload of county sheriff's department.

Penalty Provision: Individuals that knowingly file a false or frivolous claim with the Attorney General dealing with the employment of unauthorized aliens by employers commits a Class C misdemeanor. Individuals that transport, move, conceal, harbor, or shield from detection an illegal alien commits a Class A misdemeanor for a first offense. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. A Class A misdemeanor is punishable by up to one year in jail and a Class C misdemeanor is punishable by up to 60 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: Local revenue for maintenance of roads can decrease to the extent that (1) political subdivisions pass ordinances that prohibit or limit communication between state and local officials, state and local employees, and law enforcement personnel with the U.S. Department of Homeland Security, other governmental entities, and federal officials and (2) political subdivisions knowingly assist unlawfully present persons secure certain public benefits.

Court Fee Revenue: If additional civil and criminal actions occur, local governments would receive revenue from the following sources. (1) The county general fund would receive 27% of either the \$120 criminal costs fee or the \$100 civil costs fee that is assessed in a court of record. (2) Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If a civil case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In both circumstances, additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: DOC; Department of State Revenue; Department of Labor; ISP; DFR, Family and Social Services Administration; Office of the Secretary of State.

Local Agencies Affected: Trial courts; local law enforcement agencies; local political subdivisions that administer public benefits.

Information Sources: Indiana Sheriffs' Association; DOC; U.S. Immigration and Customs Enforcement;

U.S. Department of Homeland Security; Matt Light, Office of the Attorney General; Indiana Sheriffs' Association, PEW Hispanic Center; U.S. Citizenship and Immigration Services; U.S. Census Bureau; Jim Dunn, FSSA.

Fiscal Analyst: Bill Brumbach, 232-9559.